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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 685

LESLIE L. CONNER, *Petitioner*,

v.

A. J. SIMLER, *Respondent*.

REPLY TO RESPONSE

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REPLY TO RESPONSE

Respondent's lengthy Response to the Petition for Rehearing attempts to argue that the previous Circuit Court decision (*Simler* v. *Conner*, 282 F. 2d 382) in this case does not conflict with the decision rendered by the Supreme Court of Oklahoma in *Southard* v. *MacDonald*, ... Okla. ...., 360 P. 2d 940.

There is an obvious conflict. The elements of that conflict are as follows:

1. Respondent originally sued to obtain a determination of what fee he was required to pay, other than that indicated in the written contract.

2. No matter what respondent urges, no judgment could come down ordering him to pay a fee other than provided in the contract without cancelling that contract as a prerequisite to relief.

3. The United States Court of Appeals for the Tenth Circuit, in reversing the District Court, held that a jury must decide whether the written contract is valid and enforceable or should be cancelled.

4. The Supreme Court of Oklahoma held thereafter in the *Southard* case that neither party is entitled to a jury trial in a case in which the prerequisite to any other relief is the cancellation of a contingent fee contract.

Petitioner has no doubt that the Circuit Judges of the Court of Appeals for the Tenth Circuit would agree that the *Southard* case is unquestionably in conflict with their own decision in this case.

The Tenth Circuit said:

> ". . . we are convinced that under well established principles of law in Oklahoma, the case should have been submitted to a jury on the question of *whether the September 25th contract was fair, just and equitable and free from fraud.*" 282 F. 2d at 386. (Emphasis added.)

The Court continued, and this language shows that this case is exactly the kind contemplated by the *Southard* case:

> "If the *jury* finds the *contract* was entered into fairly, with no overreaching on the part of Conner, *then* it may be enforced. On the other hand, *if* the *jury* finds that the *September 25th part of the con-*

> *tract* was consummated because of an unfair advantage taken by Conner, *then it should determine the question of a reasonable fee.*" 282 F. 2d at 386 (Emphasis Added).[1]

"There can be no question that the disposition directed by the language quoted above, which was stated as being required "under well established principles of law in Oklahoma," conflicts with the following rule enunciated by the Supreme Court of Oklahoma in *Southard* v. *MacDonald:*

> "Where it is necessary to cancel a contingent fee contract *before any other relief prayed for can be granted*, and the cancellation of such contract is the basic relief sought, neither party is entitled to a jury trial, for the reason that the cancellation is a purely equitable matter." (Emphasis added.)

Petitioner respectfully renews its prayer contained in the Conclusion as set forth on pages 7 and 8 in its Petition for Rehearing.

Respectfully submitted,

PEYTON FORD
Attorney for Petitioner

[1] The respondent seeks to set aside the contract in its entirety. The validity of the July 18th part of the contract has never been challenged by the respondent. The "September 25th part of the contract" is no more than an agreed amendment of the earlier contract. (See pages 4 and 6 of the Petition for Certiorari where the two letters are set out in full.)